

CENTRAL INFORMATION COMMISSION

Club Building (Near Post Office),

Old JNU Campus, New Delhi - 110067.

Tel: +91-11-26161796

Decision No. CIC/SG/A/2010/002098/9399

Appeal No. CIC/SG/A/2010/002098

Relevant Facts emerging from the Appeal:

Appellant : Ms. Suroor Mander
B-68, Second Floor,
Sarvodaya Enclave, New Delhi-110017.

Respondent : Mr. M. A. Ashref
PIO & Joint Secretary (Home-II)
Govt. of NCT of Delhi
Home (Police-II) Deptt.,
5th Level 'C' Wing, Delhi Secretariat,
New Delhi-110002.

RTI application filed on : 27/01/2010
PIO replied : 25/02/2010
First appeal filed on : 19/03/2010
First Appellate Authority order : 22/03/2010
Second Appeal received on : 21/07/2010

The application had been filed with the PIO of Lok-Sabha from where after multiple transfers it reached the Home Department on 27/01/2010:

Information Sought:

The Appellant has sought following information under the RTI Act, 2005:-

- Certified photocopy of the Jain-Aggarwal Committee Report, Banerjee, Misra & Marwah Commission Report on the 1984 Anti Sikh Riots with its annexures as well as all other documents related to the Commission of inquiry.
- Certified copy of the Action Taken Report submitted to the parliament on the Jain – Agarwal, Banerjee, Misra & Marwah Commission Committee.
- Certified photocopy of the Bhatt and Singh. Commission Report on the 1989 Bhagalpur Anti Muslim Riots with its annexures as well as all other documents to the Commission.
- Certified copy of the Action Taken Report submitted to the Bihar Legislative Assembly on the Bhatt and Singh Commission of inquiry.
- Certified photocopy of the Narula Committee Report on the 1984 Anti Sikh Riots with its annexures as well as all other documents related to the Commission of inquiry.
- Certified copy of the Action Taken Report submitted to the parliament on the Narula Committee.
- Certified photocopy of the Mahapatra Commission's Interim Report on the 2007 Kandhamal Riots with its annexures as well as all other documents related to the Commission.
- Certified copy of the Action Taken Report submitted to the Orissa Legislative Assembly on the Mahapatra Commission of inquiry.
- Certified photocopy of the Kapur — Mittal Commission Report on the 1984 Anti Sikh Riots with its annexures as well as all other documents related to the Commission of inquiry.
- Certified copy of the Action Taken Report submitted to the parliament on the Kapur-Mittal Commission of inquiry.

- Certified photocopy of the Nanavati Commission Report on the
- 1984 Anti Sikh Riots with its annexures as well as all other documents related to the Commission of inquiry
- Certified copy of the Action Taken Report submitted to the parliament on the Nanavati Commission of inquiry.

Reply of PIO:

The application related to 1984 Anti-Sikh riots was transferred to the PIO, ADM (HQ), Divisional Commissioner office, 5 Sham Nath Marg, Delhi by Mr.O.P. Wadhwa, OSD to Chief Secretary/PIO, Delhi.

Through letter dated 22/01/2010 the PIO, ADM (HQ) transferred Appellant's application to PIO, Home Police-II Department, GNCT of Delhi, Delhi Secretariat, I.P. Estate, New Delhi — 110002.

Reply received from the PIO (Home):-

"The records pertaining to 1984 riots are almost 25 years old and the same are not readily available with the Home Department, Govt of NCT of Delhi Efforts are being made to trace the records from our record room, and it may take some time to trace the record in respect of the information asked by you

This may be treated only as an interim reply and as soon as we are able to trace the relevant records, the same would be dealt/provided as per the provisions of Right to Information Act, 2005"

Grounds for First Appeal:

Non-receipt of the information.

Order of the First Appellate Authority:

" The application has been transferred by ADM (HQ) and received by SP IO/ Dy. Secretary (Home) on 27.1.2010. The applicant has sought information with regard to the Committees on the 1984 Anti Sikh- Riots and Action Taken report submitted to the Parliament SPIO / Dy. Secretary (Home) vide his reply dated 25.2.2010 has informed to the applicant that the record asked is almost 25 years old and the same is not readily available with the Home Department. It has been clarified by the SPIO that the reply, be treated as interim reply and the information will be provided as per provision of Right to Information Act. 2005. It appears that the copy of same has not been received by the applicant.

The SPIO is directed to provide a copy of the letter dated 25/02/2010 sent to him. The SPIO is also directed to provide the information as maintained by the SPIO immediately after checking the record."

Grounds for Second Appeal

Incomplete information received from the PIO.

Relevant Facts emerging during Hearing:

The following were present

Appellant: Ms. Suroor Mander;

Respondent: Mr. Vineet Kumar, OSD(Home) on behalf of Mr. M. A. Ashref, PIO & Joint Secretary (Home-II);

The appellant had sought seven reports relating to the 1984 Sikh Riots originally from the Lok-Sabha Secretariat. It is assumed that they do not have the reports hence they transferred the RTI application to Ministry of Home Affairs. Presumably Ministry of Home Affairs in the Central Government did not have any of these reports hence the RTI application was transferred to the Chief Secretary who transferred it to Divisional Commissioner of Delhi who in turn transferred it to Home Department of the Government of Delhi. After that the PIO at the Home Department Delhi said that he could not locate the reports which must have been produced at considerable cost to the public exchequer. In bits and pieces they have managed to give some reports and yet the following reports are missing completely:

- 1- Marwah Commission on the 1984 Anti Sikh Riots.
- 2- Dhillon Committee on the 1984 Anti Sikh Riots.
- 3- Narula Committee on the 1984 Anti Sikh Riots.

It appears that a number of Commissions have made hay on the Anti Sikh Riots and given reports which have not delivered any justice to the victims and yet these reports cannot be located. The appellant naively believes that the Government would have acted on these reports, whereas it appears nobody is even aware of what these reports said.

The PIO Mr. M. A. Ahsref, Joint Secretary has refused to provide the Kapur Mittal report on the Anti Sikh Riots by his letter of 29/03/2010 where he states that, *"the report of Kapur Mittal Committee has been marked as secrete and therefore cannot be disclosed under the provisions of Official Secrete Act 1923"*. Nearly four and half years after the RTI Act 2005 had been implemented a PIO must realize that refusal to give information can only be based on the exemptions of Section 8(1) of the RTI Act. No exemptions of Section-8(1) of the RTI Act have been quoted by the PIO nor has he given any reasons to explain how the information is exempt. Thus the action of the PIO is without any basis in law.

As regards the Marwah Commission, Dhillon Committee and Narula Committee reports Mr. G. S. Patnaik, Home Secretary will provide an affidavit to the appellant before 10 October 2010 certifying that these reports are not with the Delhi Government.

Decision:

The appeal is allowed.

The PIO is directed to provide a copy of the Kapur Mittal Committee report to the appellant before 10 October 2010.

The Commission also directs Mr. G. S. Patnaik, Home Secretary to provide an affidavit as directed above to the appellant before 10 October 2010.

The issue before the Commission is of not supplying the complete, required information by the PIO Mr. M. A. Ahsref, Joint Secretary within 30 days as required by the law.

From the facts before the Commission it is apparent that the PIO is guilty of not furnishing information within the time specified under sub-section (1) of Section 7 by not replying within 30 days, as per the requirement of the RTI Act. It appears that the PIO's actions attract the penal provisions of Section 20 (1). A showcase notice is being issued to him, and he is directed give his reasons to the Commission to show cause why penalty should not be levied on him.

Mr. M. A. Ahsref, Joint Secretary will present himself before the Commission at the above address on **01 November 2010 at 2.30pm** alongwith his written submissions showing cause why penalty should not be imposed on him as mandated under Section 20 (1). He will also submit proof of having given the information to the appellant.

If there are other persons responsible for the delay in providing the information to the Appellant the PIO is directed to inform such persons of the show cause hearing and direct them to appear before the Commission with him.

This decision is announced in open chamber.

Notice of this decision be given free of cost to the parties.

Any information in compliance with this order will be provided free cost as per Section 7(6) of RTI Ac.

Shailesh Gandhi
Information Commissioner
17 September 2010

(In any correspondence on this decision, mentioned the complete decision number.)(AK)

CC;

To, Mr. G. S. Patnaik, Home Secretary through Mr. Vineet Kumar, OSD(Home)